

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

BRIAN BOWEN II,
PLAINTIFF,

v.

ADIDAS AMERICA, INC.;
JAMES GATTO; MERL CODE;
CHRISTIAN DAWKINS; MUNISH
SOOD; THOMAS GASSNOLA; and
CHRISTOPHER RIVERS,
DEFENDANTS.

NO. 3:18-CV-3118-JFA

MOTION TO DISMISS

TO: W. MULLINS McLEOD, JR., ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that, on the tenth (10th) day after service hereof, or as soon thereafter as is convenient for Court and Counsel, the Defendant, Merl Code, through his undersigned attorney, will move before the Presiding Judge for an Order dismissing the within action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure in that the Complaint fails to state a claim upon which relief can be granted. This Motion is based upon the following:

1. The Complaint fails to plead proximate causation of injuries that directly resulted from Defendant Code's conduct as required under RICO.
2. Any damages, which are expressly denied, are entirely speculative and Plaintiff voluntarily relinquished his scholarship when he left the University of Louisville.
3. The doctrine of *In Pari Delicto* bars Plaintiff's recovery due to the culpable repeated conduct of Plaintiff's father.
4. The Complaint does not plead any predicate act of racketeering and Plaintiff specifically states that the alleged wrongful conduct was directed at others, not him.
5. The Complaint fails to allege a RICO enterprise or allege facts that give a specific time, place, date, individuals collectively involved, or other circumstances concerning the origin and formation of any conspiratorial agreement to harm Plaintiff or any other person or entity.

6. The Complaint fails to allege that the “enterprise” was designed and intended to harm Plaintiff or any other person or entity.

The Defendant adopts and joins in the Memorandum of Law filed or to be filed by Adidas America, Inc.

FINGER, MELNICK & BROOKS, P.A.

s/Terry A. Finger

Terry A. Finger

S.C. Bar No. 2012

Attorney for the Defendant, Merl Code

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Hilton Head Island, South Carolina
February 5, 2019